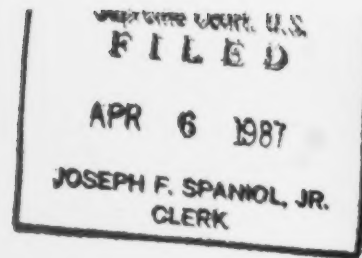


EDITOR'S NOTE:

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NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner,

v.

THE STATE OF ARIZONA, Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
ARIZONA COURT OF APPEALS, DIVISION TWO

ERIC L. HAGER
7322 North Oracle Road
Tucson, Arizona 85704
(602) 297-5111

Counsel of Record

ERIC L. HAGER
7322 North Oracle Road
Tucson, Arizona 85704
(602) 297-5111

Counsel for Petitioner

April 6, 1987

66 PP

QUESTIONS PRESENTED

1. Was there any untainted information contained within the affidavit for the search warrant?

2. If there was information untainted by the police illegal search and seizure, were there sufficient facts contained within the search warrant affidavit, independent of what the police observed during a prior illegal search, and independent of the fruits of said illegal search, to constitute probable cause for the issuance of the subsequently issued search warrant?

3. If there was an insufficient independent source of information to support probable cause for the issuance of the search warrant, should not all of the evidence obtained via the search warrant have been excluded at trial?

**LIST OF PARTIES [and or]
RULE 28.1 LIST**

The parties to the proceedings are petitioner, William Ward Knapp, and the State of Arizona, respondent.



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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner

v.

THE STATE OF ARIZONA, Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE ARIZONA
COURT OF APPEALS, DIVISION TWO

The petitioner William Ward Knapp respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Arizona Court of Appeals, Division Two, entered in the above-entitled proceeding on February 4, 1987.

OPINIONS BELOW

The opinion of the Arizona Court of Appeals is an unreported memorandum decision, and thus, reprinted in the appendix hereto, page 17.

The Arizona Supreme Court denied Petitioner's

petition for review by the Arizona Superior Court and on February 4, 1987, the Arizona Court of Appeals entered its order in conformity with its memorandum decision.

JURISDICTION

STATUTE INVOLVED

Petitioner herein submits that this court has jurisdiction, pursuant to 28 U.S.C. Section 1257(3), because petitioner has been denied his rights under the Fourth Amendment of the United States Constitution due to the fact that the State of Arizona, through its police officers, illegally searched and seized property of the petitioner and said evidence was used at trial in violation of petitioner's right to be protected and free from unreasonable search and seizures.

STATEMENT OF THE CASE

The Arizona Court of Appeals, Division Two,



affirmed the trial court's finding that despite an illegal search and seizure by the police of petitioner's room, the evidence that the police observed during said illegal search was admissible because the search warrant affidavit contains sufficient facts, untainted and independent of what the police observed during the illegal search, to support the issuance of the search warrant and subsequent use of the evidence at trial.

A copy of the memorandum decision is included the Appendix as Exhibit A.

The material facts are as follows:

A maid cleaning a Tucson, Arizona, motel room entered room number 129 to clean. The affidavit for issuance of a search warrant¹ stated that

"she observed a quantity of marijuana in the bath tub in the [sic] Room 129. Contact was made to the Tucson Police Department by the manager [not the maid] of the Holiday Inn. Officers Ralls and Knoblock were taken to room number 127 and room number 129 by the manager. . . Number 129 was entered due to the concern of the management as to what items were located in the bath tub area. . . Upon Officers Ralls and Knoblock entering this room number 129, they observed a quantity of what appeared to be marijuana located in the bath tub area. . . After this was observed and a



surveillance was maintained from room number 231. . . ."

Petitioner was arrested and then a search warrant was issued based upon the information contained in the search warrant affidavit. The trial court ruled that the initial entrance by Officers Knoblock and Ralls was illegal and suppressed evidence of what the police observed during that initial illegal entry, but allowed that same evidence to be introduced at trial based upon the independent source doctrine. The trial court stated:

"However, the court is of the opinion that there are sufficient facts contained in the search warrant and the affidavit in support of the search warrant independent of what the officers saw in the room to constitute probable cause for the issuance of the search warrant, and, therefore, denies the motion to suppress insofar as it relates to that which was seized and pursuant to the search warrant."

The police (Officers Ralls and Knoblock) saw the marijuana during their illegal entry. The affiant who swore out the telephonic affidavit in support of the search warrant was Officer Kreutz.



Officer Kreutz arrived on the scene subsequent to the illegal entry, and joined Officers Ralls and Knoblock in the surveillance from room number 231². Officer Kreutz, the search warrant affiant, did not speak with the maid informant prior to swearing out the affidavit. Officer Kreutz did not speak with the manager identified (but unnamed) in the affidavit. Officer Kreutz obtained from Officers Knoblock and Ralls the information in the affidavit concerning what the maid saw and what the manager had been concerned about, just after their illegal search. Officer Kreutz, in his obtaining the search warrant, used the information that Ralls and Knoblock had gained during their illegal search³. The affidavit does not state that the manager had seen any contraband. Officer Kreutz' only observation contained in his affidavit for the search warrant was that of petitioner having loaded and unloaded suitcases⁴. Officer Kreutz did not see any contraband or illegal activity. The only grounds for the arrest were petitioner's unloading and loading - of suitcases and the illegal



observations of Officers Ralls and Knoblock during the illegal warrantless entry⁵. According to the affidavit, Officer Knoblock and/or Ralls spoke to the manager, not the maid. The manager told Officer Knoblock he/she was concerned "as to what items were located in the bath tub"⁶. Officers Knoblock and Ralls then told Kreutz (the search warrant affiant) what they had seen during their illegal search. There is no mention in the affidavit what, if anything, the maid told the manager. The source of affiant's information concerning marijuana is three times removed from the affiant himself, that is, triple hearsay. None of the names of the people providing information to the police are contained within the affidavit. The only pieces of information contained in the search warrant affidavit that might be considered untainted are the statements about what a maid saw (which is at least double hearsay) and the observations made subsequent to the illegal search, that is, the loading and unloading of suitcases. All other information in the search warrant affidavit pertinent to the issue



of probable cause for issuance is tainted, if not illegal. However, it can be argued that even those statements about what a maid saw and about the loading and unloading of suitcases is also tainted because the statement about what the maid saw provided the basis for the illegal entry by the police, and those same police gave that information to the search warrant affiant, all of which was used in obtaining the search warrant⁷.

But assuming for the purposes of the following argument that the statements in the affidavit about what a maid saw and about the loading and unloading of suitcases is untainted, the issue then becomes whether that information is sufficient to provide probable cause for the issuance of a search warrant.

REASONS FOR GRANTING THE WRIT

The writ should be granted because there is insufficient information in the search warrant affidavit to support a finding of probable cause, after all illegally obtained information is excised

from the search warrant affidavit.

Given the fact that the police officers (Knoblock and Ralls) illegally entered and observed the marijuana which was eventually admitted into evidence at trial, the conceptual difficulty arises when excising the illegally obtained information contained in the affidavit in support of the search warrant, and then confining oneself to only that information which is left within the four corners of the affidavit in determining whether the magistrate had probable cause to issue the search warrant. What is left is the totality of the circumstances upon which the probable cause determination should be made. The requirement of probable cause for the issuance of a warrant is to be determined in light of the totality of the circumstances made known to the magistrate, Illinois v. Gates, 462 U.S. 213, 103 S.Ct. 2317 (1983). (Emphasis supplied.) The search warrant issued subsequent to an illegal search is nonetheless valid if it could have been issued upon the untainted information contained in the affidavit, United States v. Dimuro, 540 F.2d 503,



Cert. Den. 429, U.S. 1038, 97 S.Ct. 733, 50 L.Ed. 2d 749. All data necessary to show probable cause for the issuance of a search warrant must be contained within the four corners of the written affidavit, United States v. Anderson, 453, F.2d. 174, United States v. Lucarz, 430 F.2d. 105.

The Arizona Court of Appeals, Division Two, stated in its memorandum decision⁸ herein that "the information provided by the maid was in itself sufficient to establish probable cause", relying on State v. Diffenderfer, 120 Ariz. 404, 586 P.2d. 653 (App. 1978). There are two problems with that statement by the Court of Appeals. The first is that the affidavit does not state that the maid "provided" any information at all, nor does the affidavit state to whom such "information" was provided. There is nothing within the four corners of that affidavit stating any of the police ever spoke to the maid prior to issuance of the search warrant. At most, it can be inferred that the maid may have spoken to the manager, who in turn called the police, although the affidavit does not even



state that the maid is the person who alerted the management, nor does the affidavit state that the maid spoke to the manager. Even the affidavit states that "contact was made to the Tucson Police Department by the manager of the Holiday Inn. Officers Ralls and Knoblock were taken to room number 127 and room number 129 by the manager." (Emphasis added.) There is no way that the magistrate could have reasonably determined that the maid had provided any information to the affiant. And in fact, we know that the maid had not spoken to the affiant (Officer Kreutz) prior to or at the time of the issuance of the warrant⁹ because Officer Kreutz' involvement began at the surveillance stage in the room above, subsequent to the illegal entry.

The second problem with the Arizona Court of Appeals' statement that "the information provided by the maid was in itself sufficient to establish probable cause" is the Court's reliance on State v. Diffenderfer, supra. Admittedly, Diffenderfer is the closest case to the case at hand, but it is not on point.



In Diffenderfer, two named, citizen informants told the policeman/search warrant affiant directly that they had seen marijuana growing in a yard. In the case at bar, the maid did not tell the affiant anything. And, according to the affidavit, the only direct contact any of the "informants" had with the police was the manager's statement of concern "as to what items were located in the bath tub". Thus, note the fact that the information given directly to the police (as contained within the four corners of the affidavit) says nothing even remotely related to contraband. In Diffenderfer, the affidavit contained the names and addresses of the informants, thus allowing the magistrate to conclude that those informants were named, citizen informants, and presumably reliable. In the case at hand, the informant is anonymous. No where within the four corners of the affidavit herein is there the name of the maid who observed marijuana in the bath tub. "Anonymous" literally means "without name".

Thus, whereas in the Diffenderfer affidavit, you have two named, citizen informants stating



directly to the search warrant affiant that they saw marijuana. In the case at hand you have a situation where, according to the affidavit, the only person who had supposedly seen marijuana (the anonymous maid) had no contact with the search warrant affiant. Indeed, according to the affidavit, the maid, who was the only person who had (legally) seen the marijuana, had not made any sort of contact with any of the police, let alone the search warrant affiant.

A search warrant affiant must have personal knowledge as to the facts alleged, as distinguished from a ceremonial attestation that he knows or believes facts to be true, State v. Moody, 114 Ariz. 365, 560 P.2d. 1272, and where the information in a search warrant affidavit is not within the affiant's first-hand knowledge, the allegations must be factual rather than conclusory and be shown to be reliable, Id., State v. Torres, 112 Ariz. 525, 544 P.2d. 207 (1975).

There can be no dispute that the extent of Officer Kreutz' first-hand knowledge as contained



within the four corners of the affidavit was the surveillance observation from above, subsequent to the illegal search, as Officer Kreutz was not present at the time of the illegal search, but arrived sometime after.

Thus, the information given by Kreutz in the affidavit regarding the observation of marijuana by the anonymous maid was at least double hearsay. It was at least double hearsay because, according to the affidavit, the maid told somebody she had seen marijuana. (The maid may have told the manager.) The manager then told Officers Knoblock and Ralls about the management's "concern about items in the bath tub" (not specifically marijuana or even contraband) and then Officers Knoblock and Ralls told Officer Kreutz what the manager had told them and what had been told to the manager by the maid. Officer Kreutz then related all of this information to the magistrate.

Hearsay may be the basis for the issuance of a search warrant so long as there is a substantial basis for crediting the hearsay, Jones v. United



States, 362 U.S. 257, 270, 80 S.Ct. 725, 735, 4 L.Ed.2d. 697. The only substantial basis for crediting that hearsay is the corroborating observations made by Knoblock and Ralls during their illegal entry. But again, that information must be excised from the affidavit and cannot be used to determine probable cause, Dimuro, supra.

It is respectfully submitted that if a substantial basis is necessary for crediting single hearsay, something even more is required in the case of double hearsay. But nevertheless, State v. Torrez, 112 Ariz. 525, 544 P.2d. 207, holds that absent any demonstration within the affidavit of the reliability of the source of double hearsay information in support of a search warrant, such double hearsay cannot be considered in determining whether probable cause exists for issuance of the warrant. Certainly, the fact of emptying suitcases at a motel and coming out of a motel room with suitcases that appear heavy does not constitute a "substantial basis" for crediting hearsay, let alone double hearsay.



Because there is nothing left within the four corners of the affidavit that provides a "substantial basis" for crediting the double hearsay information regarding what the maid saw, that is, that the maid saw marijuana, the Court of Appeals' statement that "the observation of the officers outside the motel room were sufficient to establish probable cause that the marijuana had been transferred to suitcases within the car" does not follow (emphasis added). It does not follow because there is nothing to substantiate the double hearsay that there was ever any marijuana in the first place. Consequently, there cannot be probable cause that "the marijuana" was transferred (to suitcases within the car or anywhere else for that matter.)

CONCLUSION

Thus, even if the information in the search warrant affidavit about the anonymous informant's observations and the search warrant affiant's observations are untainted, the former is double



hearsay without a substantial basis and the latter is simply testimony of innocent conduct (that is, the unloading and loading of suitcases at a motel.) Because there is a lack of information within the four corners of the affidavit (after excising the illegally obtained information), the trial court erred in admitting evidence of the contraband and the Court of Appeals similarly erred in affirming the trial court's decision. The fruits of the illegal search should have been suppressed under Mapp v. Ohio, 367 U.S. 643, and also excluded as evidence which was tainted as fruit from the poisonous tree, Silverthorn Lumber Co. v. United States, 251 U.S. 385 (1920). Thus, the evidence should have been suppressed and petitioner's conviction should be reversed and/or remanded for



further proceedings.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "E. L. Hager", is written over the printed name.

ERIC L. HAGER

7322 North Oracle Road

Tucson, Arizona 85704

(602) 297-5111



APPENDIX

Footnote 1, Telephonic Search Warrant/ Affidavit.....	
Footnote 2, Transcript of Suppression Hearing, pg. 34, lines 1-12.....	
Footnote 3, Transcript of Suppression Hearing, pg. 38, lines 6-11; Telephonic Search Warrant/Affidavit, pg. 3.....	
Footnote 4, Transcript of Suppression Hearing, pg. 35, lines 1-15.....	
Footnote 5, Transcript of Suppression Hearing, pg. 24, lines 16-25; pg. 25, line 1.....	
Footnote 6, Telephonic Search Warrant/ Affidavit.....	
Footnote 7, Transcript of Suppression Hearing, pg. 37, lines 7-24.....	
Footnote 8, Memorandum Decision of Arizona Court of Appeals, Division Two.....	
Footnote 9, Transcript of Suppression Hearing, pg. 7, lines 14-20; pg. 37, lines 12-19.....	



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

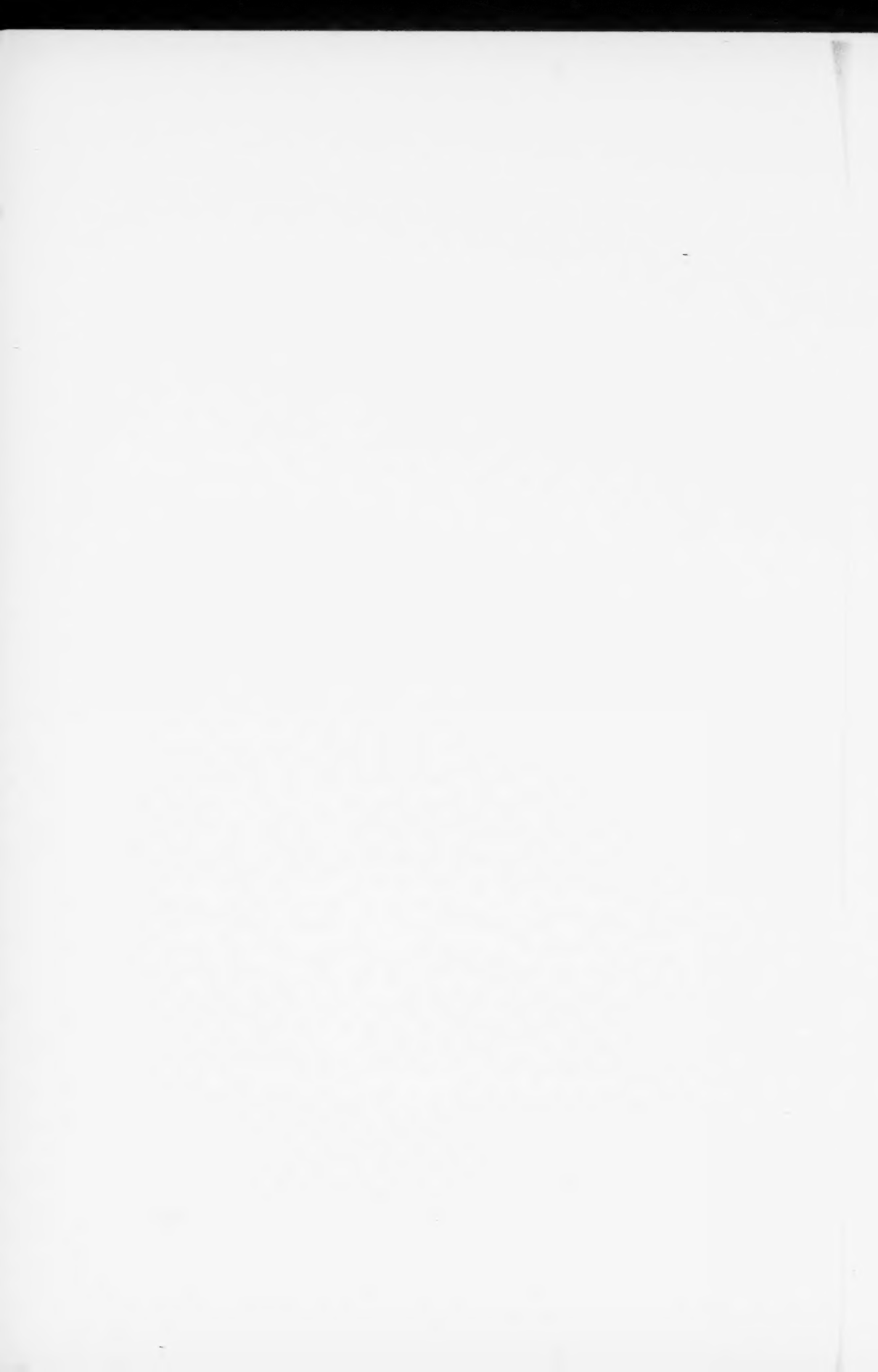
THE STATE OF ARIZONA,)	2 CA-CR 4377
)	DEPARTMENT B
Appellee,)	
)	PIMA County
v.)	Cause No. CR-15791
)	
WILLIAM WARD KNAPP,)	<u>ORDER</u>
)	(Mandate)
Appellant.)	

The MEMORANDUM DECISION of this Court in the above-entitled matter was filed on July 23, 1986.

A Motion for Reconsideration, filed August 7, 1986, was DENIED by Order of this Court on September 2, 1986.

A Petition for Review, filed September 25, 1986, was DENIED by Order of the Arizona Supreme Court on January 20, 1987.

IT IS THEREFORE ORDERED in conformity with the
EXHIBIT A



MEMORANDUM DECISION attached hereto.

IT IS FURTHER ORDERED that a certified copy of this order together with a copy of the MEMORANDUM DECISION be forwarded to the Clerk of the Superior Court for PIMA County; that a copy of this order be sent to the above-named parties or their attorneys of record; to The Honorable Harry Gin Judge Pima County Superior Court, as well as the PIMA County Attorney.

DATED: February 4, 1987

s/ Joseph M. Livermore

Joseph M. Livermore

Presiding Judge

ORDER (Mandate)

Page Two

2 CA_CR 4377

PIMA County Cause No. CR-15791

STATE OF ARIZONA



COURT OF APPEALS

I JOYCE A GOLDSMITH, Clerk of the Court of Appeals Division Two of the State of Arizona, hereby certify the above to be a full and true copy of the above Order (Mandate) made and entered in the above-entitled cause by said Court on the 4th day of February, 1987.

IN WITNESS WHEREOF, I
have hereunto set my hand
and affix the seal of said
Court this 4th day of
February, 1987.

s/ Joyce A Goldsmith
JOYCE A. GOLDSMITH, Clerk

Copy to:

Honorable Robert K. Corbin



Attorney General
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Bouschor & Hager
Eric L. Hager
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Honorable Harry Gin
Judge, Pima County Superior Court
110 West Congress, Division 14
Tucson, Arizona 85701

Honorable Stephen D. Neely



Pima County Attorney

110 West Congress, Suite 900

Tucson, Arizona 85701

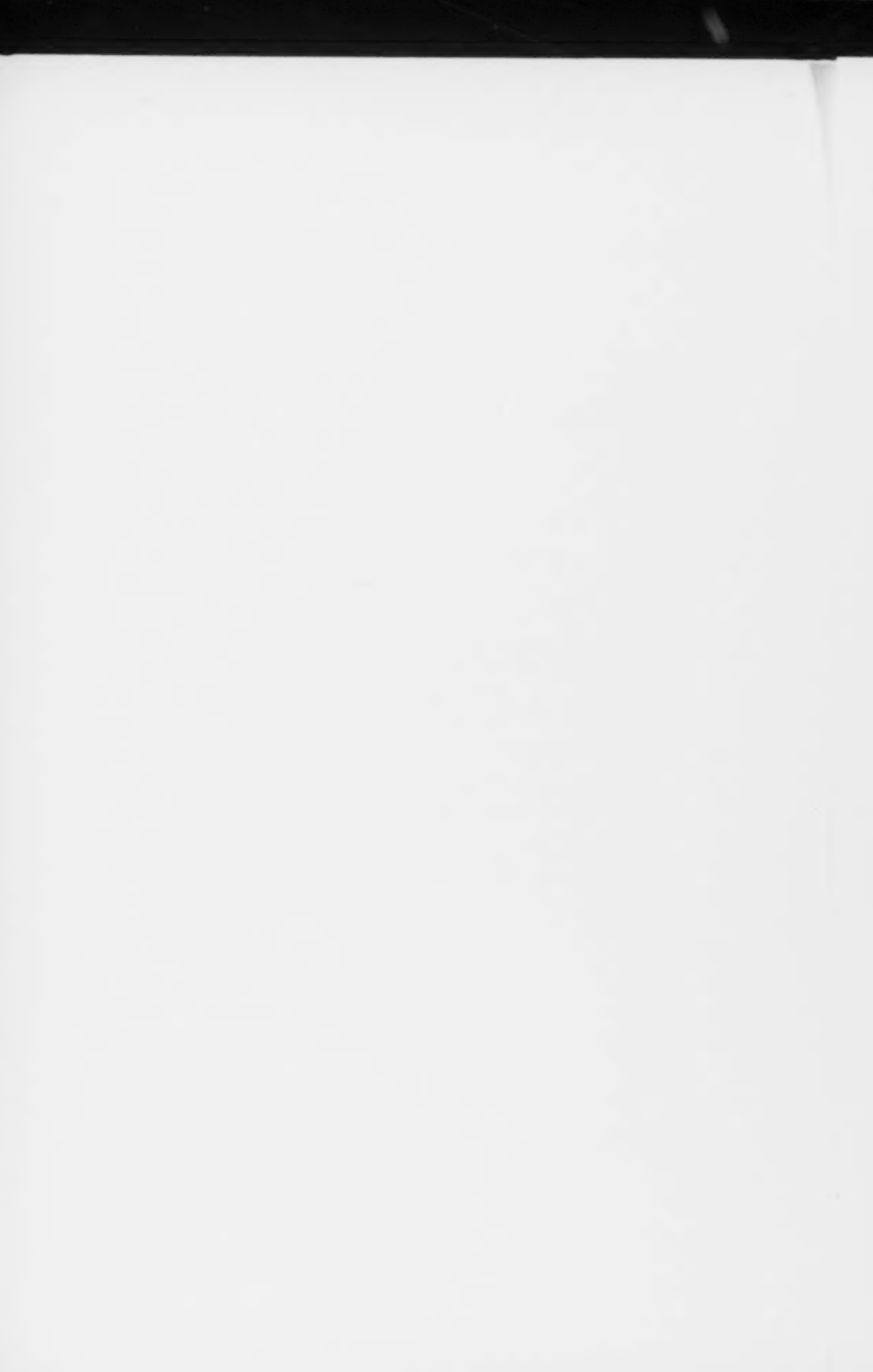
James N. Corbett

Clerk, Pima County Superior Court

110 West Congress

Tucson, Arizona 85701

[Certified Copy]



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

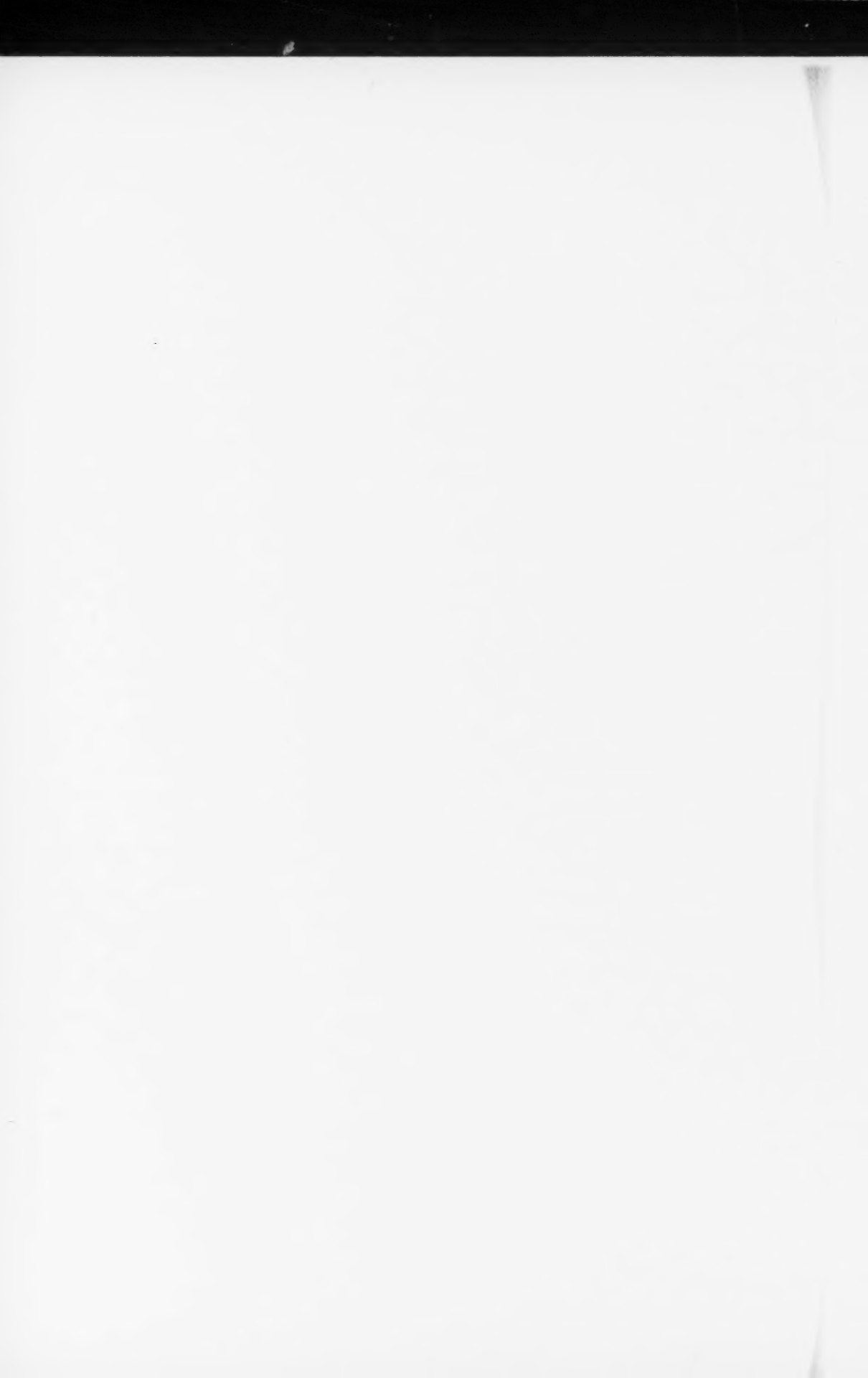
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DATED: February 4, 1987

s/ Joseph M. Livermore

Joseph M. Livermore

Presiding Judge

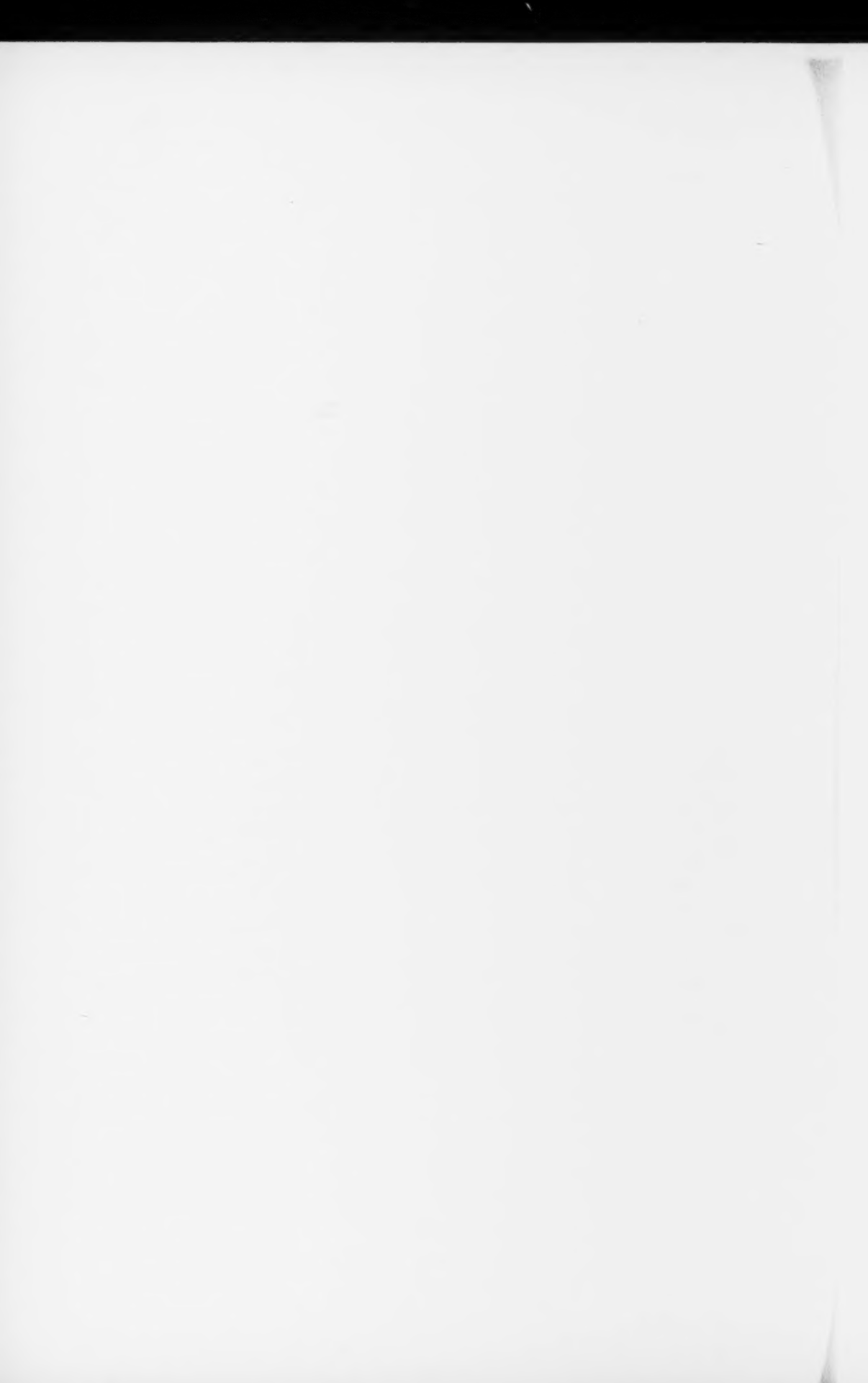
ORDER (Mandate)

Page Two

2 CA_CR 4377

PIMA County Cause No. CR-15791

STATE OF ARIZONA



COURT OF APPEALS

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IN WITNESS WHEREOF, I
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s/ Joyce A Goldsmith

JOYCE A. GOLDSMITH, Clerk

Copy to:

Honorable Robert K. Corbin



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Phoenix, Arizona 85007

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Pima County Attorney

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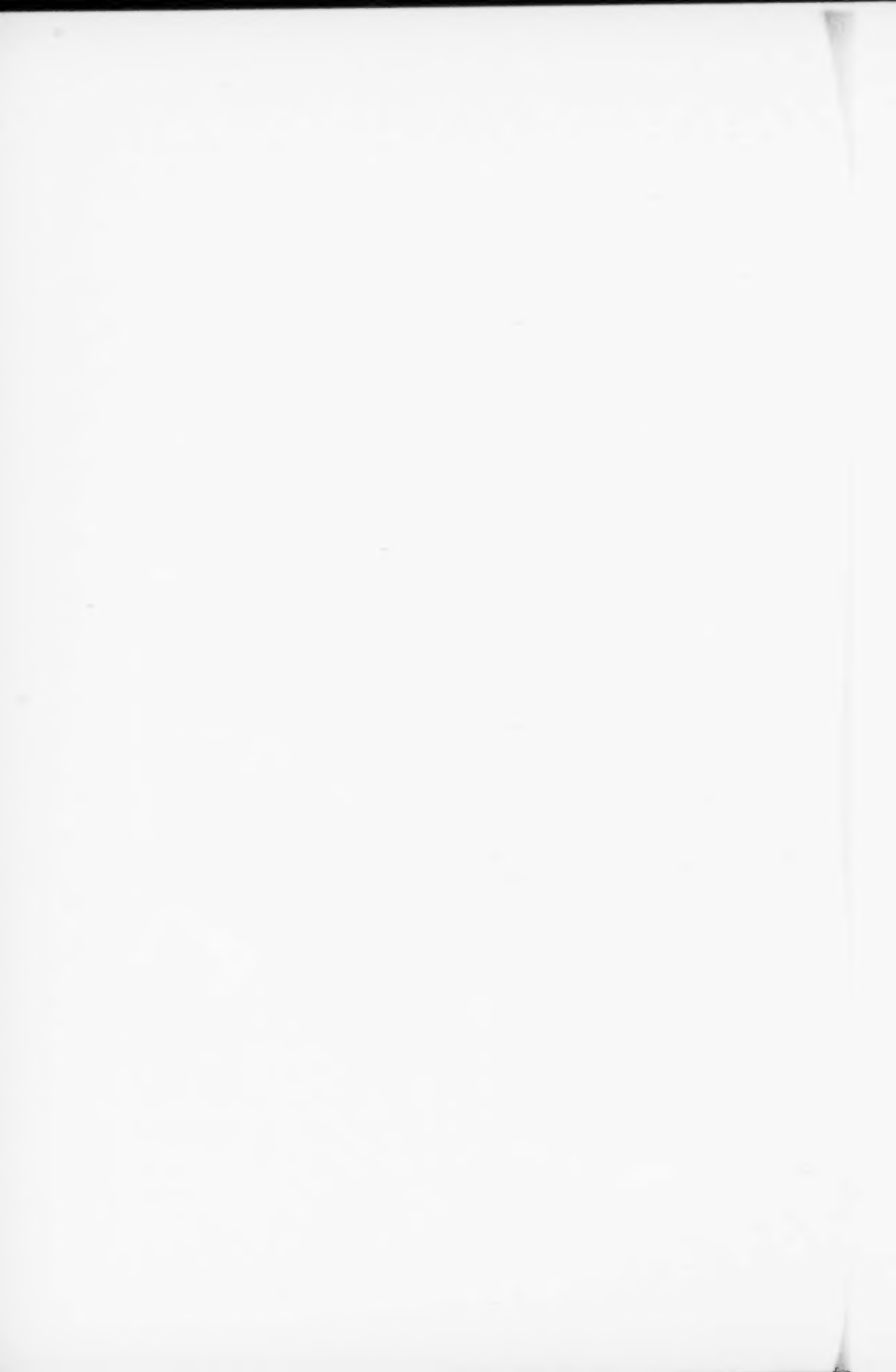
James N. Corbett

Clerk, Pima County Superior Court

110 West Congress

Tucson, Arizona 85701

[Certified Copy]



TELEPHONIC SEARCH WARRANT

Phone Ringing:

JUDGE ADAMS: Hello.

KREUTZ: Hello, Judge Adams?

JUDGE ADAMS: Yes.

KREUTZ: This is Office Kreutz.

JUDGE ADAMS: Yes.

KREUTZ: I have a Telephonic Search
Warrant I need to obtain.

JUDGE ADAMS: Alright, do you solemnly
swear the information that
you're about to give me is
true?

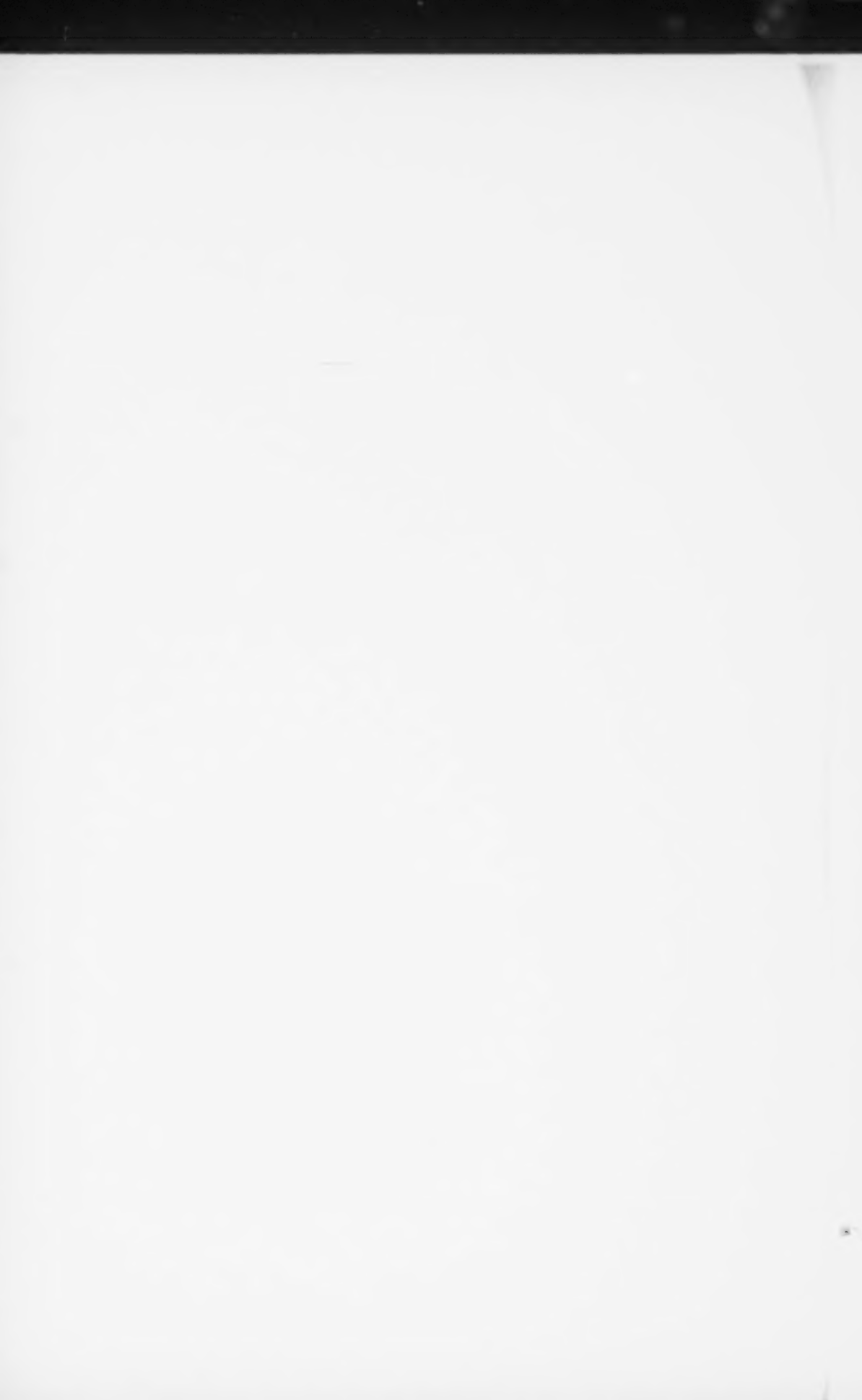
KREUTZ: Yes, I do.

JUDGE ADAMS: Go ahead.

KREUTZ: This is OFFICER KREUTZ of the
Metro Narcotics Squad. I am
calling you on June 29, 1985,
with OFFICER RALLS #21686
standing by as a witness.



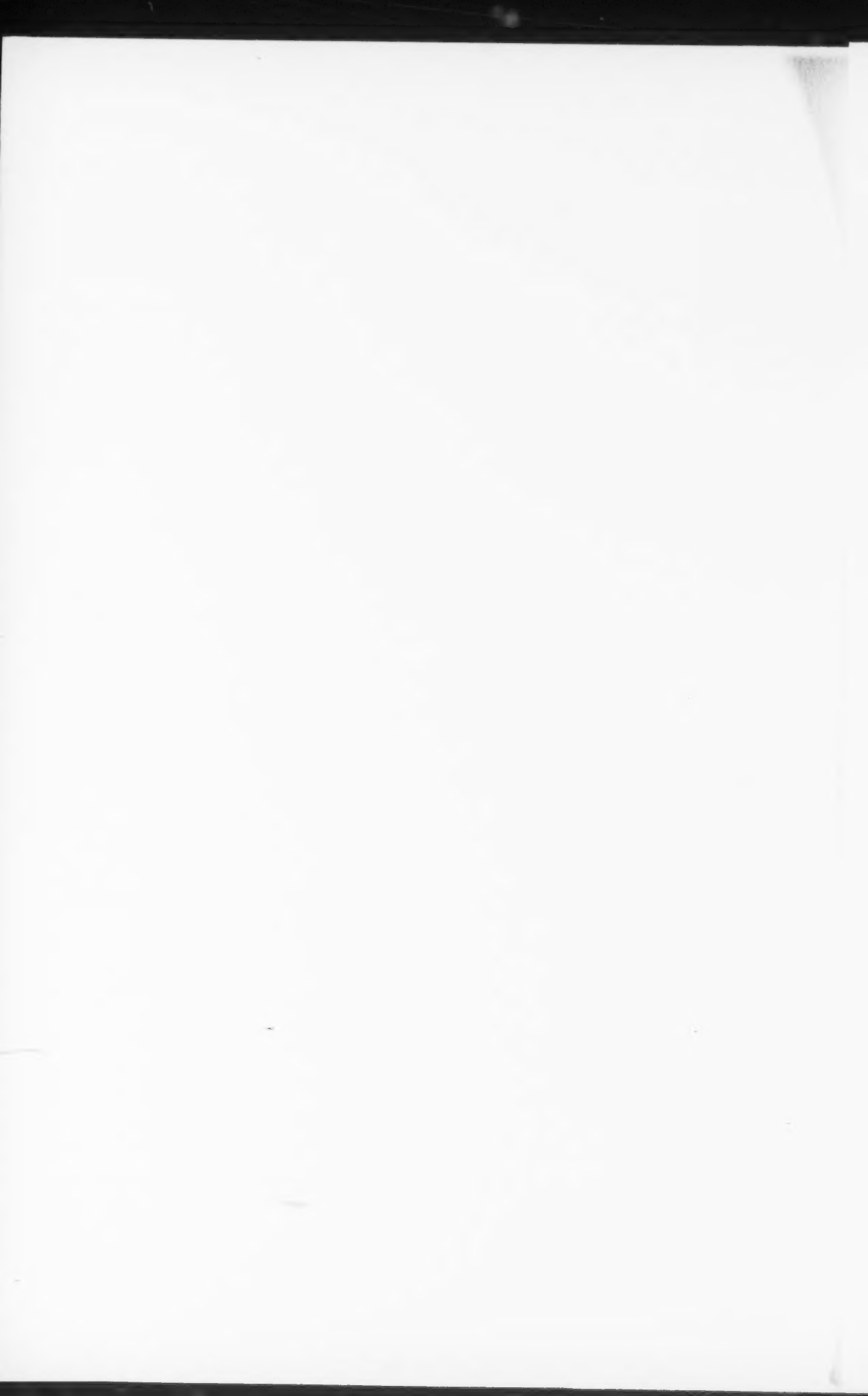
The time is now 1817 hrs. I am calling for a Telephonic Search Warrant and have just probable and reasonable cause to believe that there is now in the possession of WILLIAM WARD KNAPP, 9-20-61, and also on the premises located at 1365 W. Grant, rooms #127 and #129, which is the Holiday Inn North. This consists of a motel complex. These rooms are located on the Southwest corner of Grant and I-10 facing East. The rooms #127 and #129 are single occupancy rooms, each containing one bedroom and one bathroom area. Also in the vehicle a 1985 Chevrolet, 4 dr. light green in color, Arizona plate CNT 534.



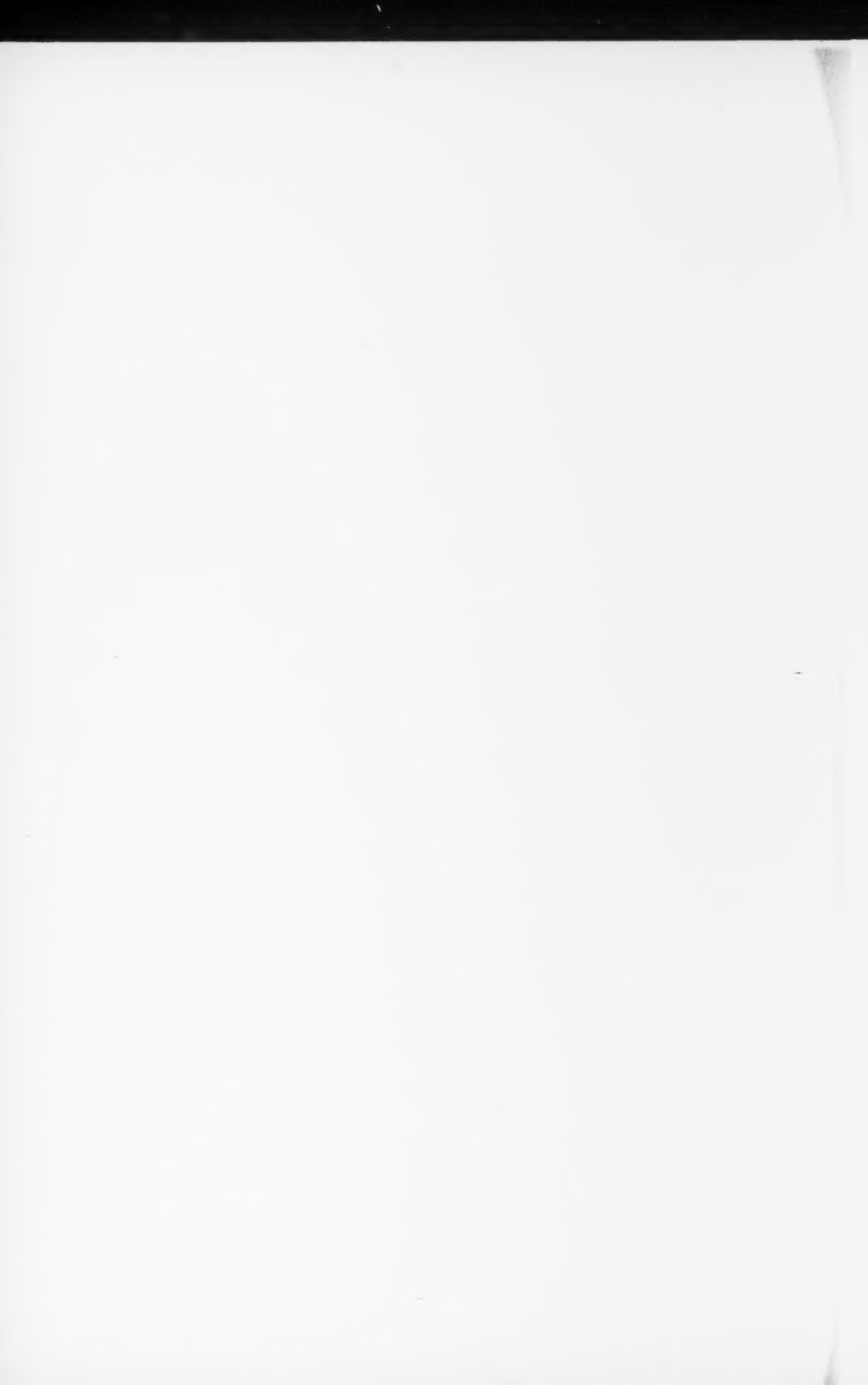
The following property to-wit:

1. Quantities of
Marijuana
2. Scales of weighing
narcotics
3. Indicia of ownership
for the rooms and
also for the car
4. Packaging equipment
for marijuana
processing and
monies.

Together with other fruits, instrumentalities and evidence of the crimes of unlawful sale of marijuana and unlawful possession of marijuana. As set-forth in this affidavit that I, KURT KREUTZ, your affiant am a peace officer in the State of Arizona, employed by the Tucson Police Department. I have been a police officer for six and three-quarter years and have the following special

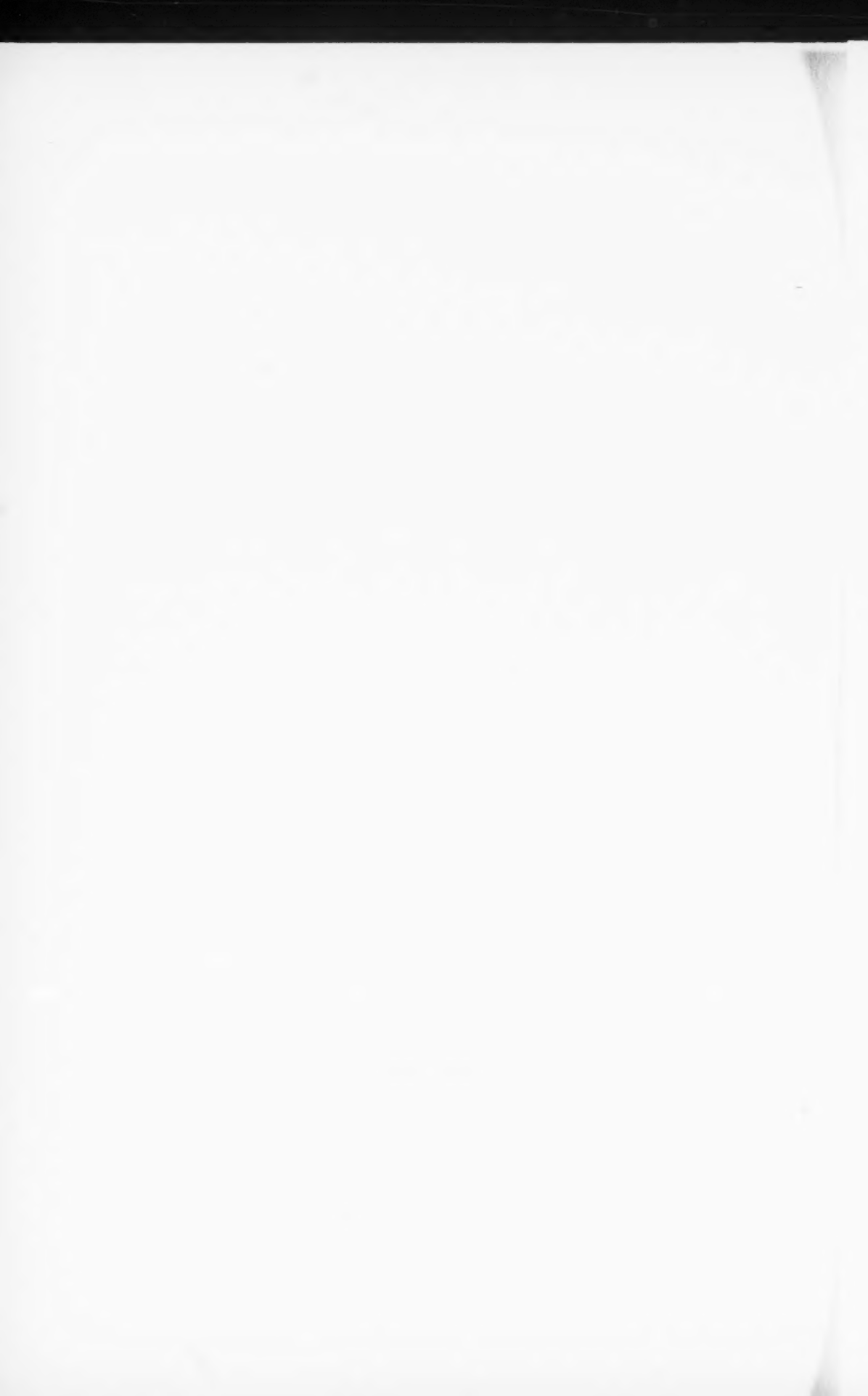


training and experience. I graduated from the Tucson Police Academy in 1979, and during the course of training at the Tucson Police Academy received extensive background information in regards to the location and identification of marijuana. During the course of employment with the Tucson Police Department I have been in the Uniform Division also the Detective Division and have been in the Adam One Division. During the course of my employment in these locations in the Tucson Police Department I have had numerous contacts and arrests involving marijuana and the identification of marijuana. For the last thirteen months I have been assi[sic] to the Metro Narcotics Squad which is located at the Department of Public Safety. During the course of my training in Metro I have been trained in the identification of marijuana and other narcotics. During the course of my training at the Department of Public Safety for Metro Narcotics I have attended the advance DEA Narcotics School and worked uncover in numerous contacts involving marijuana purchases and also



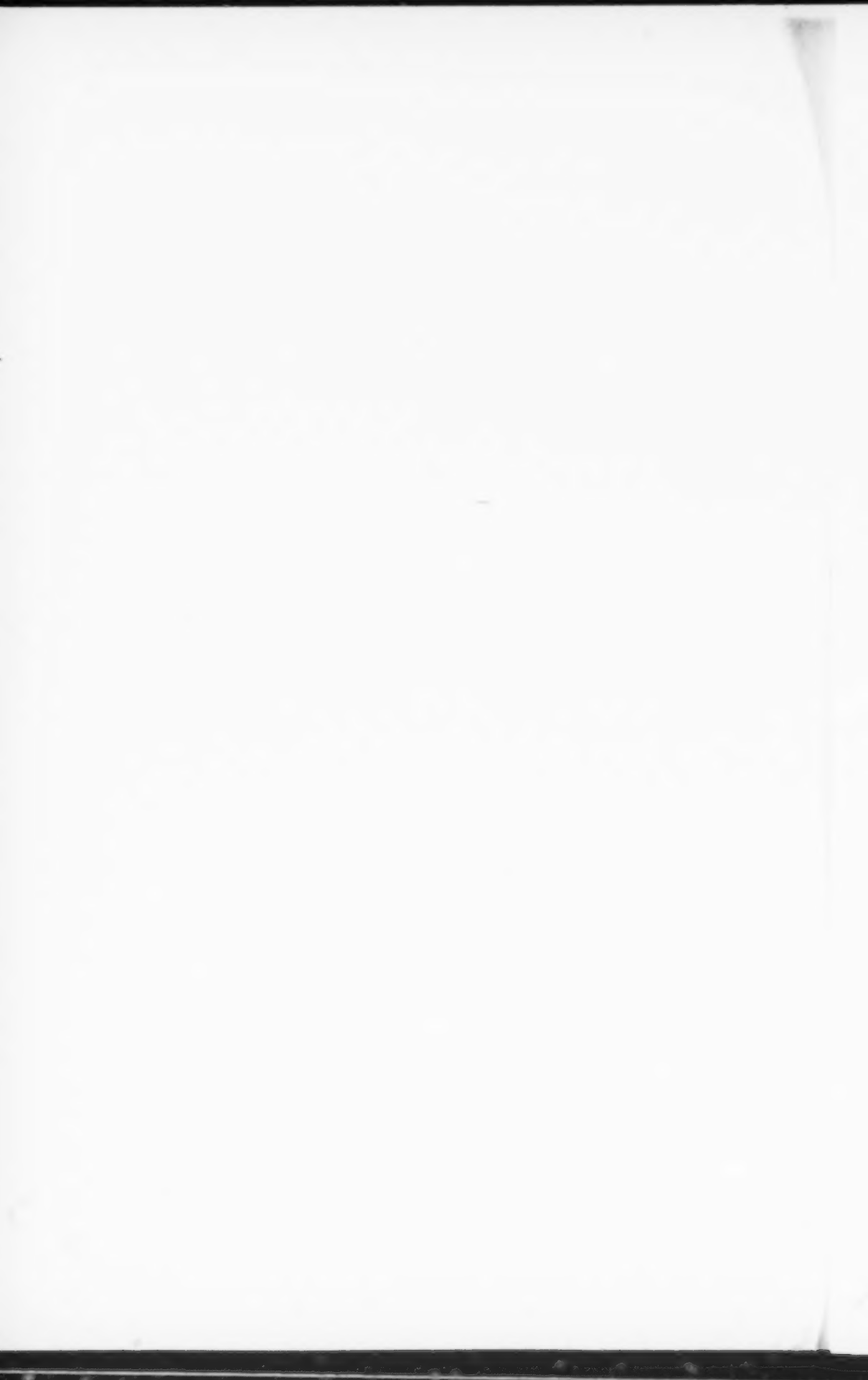
indentification of marijuana. At this time I am investigating the crimes of unlawful possession of marijuana for sale and unlawful possession of marijuana which I believe to have been committed on the 29th of June 1985, in Pima County. Based upon the following reasons:

Within the last seventy-two hours an employee, which is a maid at the Holiday Inn North, located at 1365 W. Grant Rd. entered room #129 to clean. She observed a quantity of marijuana in the bathtub in the room #129. Contact was made to the Tucson Police Department by the manager of the Holiday Inn. OFFICERS RALLS and KNOBLOCK were taken to room #127 and room #129 by the manager. These rooms were



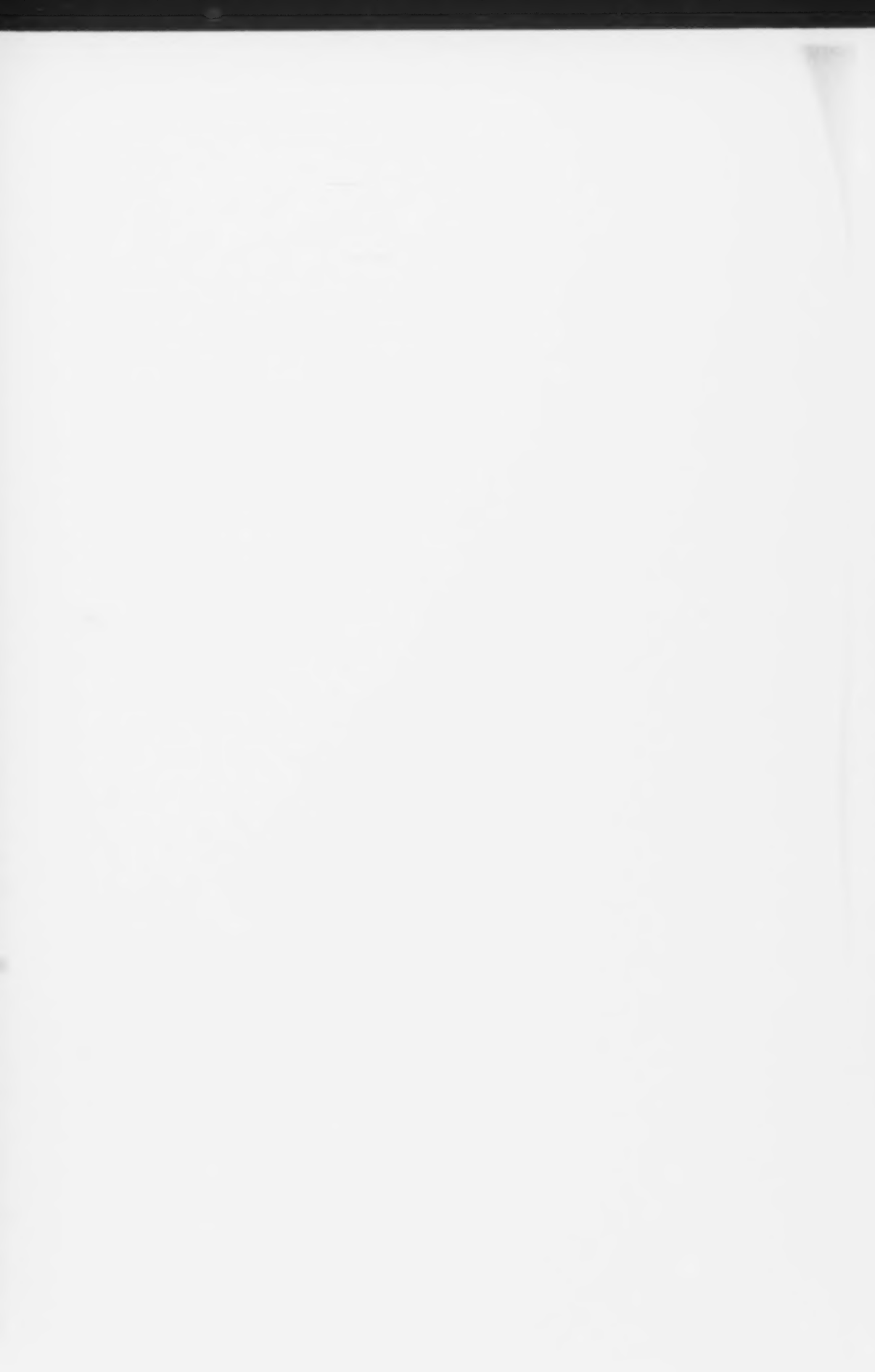
rented by the same person known to the employee of the Holiday Inn front desk area as a subject named ROBERT PECHULIS. Number #129 was entered due to the concern of the management as to what items were located in the bathtub area. Number #127 was unable to be entered due to the interior door between the rooms and also the exterior door to that room being locked and no known master key available to enter that room. Both rooms are connected by interior doors and once again the interior door to #127 between that and #129 was locked. Upon OFFICERS RALLS and KNOBLOCK entering this room #129, they

observed a quantity of what appeared marijuana located in the bathtub area. This marijuana type substance was observed in clear plastic sealed bags and once again was located in the bathtub of the single bathroom location in room #129. After this was observed the room was left and a surveillance was maintained from room #231 which is directly above rooms #127 and #129. A subject matching the description of the subject who had rented the rooms of #127 and #129 and had given the name of ROBERT PECHULIS to the Holiday Inn front desk arrived at the location on the eastside of the Holiday



Inn Motel. He was operating a vehicle which was a light green 4 dr. '85 Chevrolet with an Arizona license plate CNT 534, which was the same plate which was given by the subject who rented the rooms #127 and #129 on that previous date of June 28, 1985. As the subject in the vehicle arrived in front of rooms #127 and #129 a suitcase was emptied in the vehicle and numerous clothing items were removed from that suitcase making it empty. Also, numerous boxes which were collapsed were carried into room #129 by the same subject along with the emptied suitcase. An additional paperbag

containing unknown items were carried into that same room. A short while later this subject came out of room #129 carrying the same suitcases at this time the suitcase appeared to be no longer empty and the subject was having difficulty carrying that item. Also, the subject was carrying a large grey duffle-bag which appeared to be very heavy also. These items were placed in the same vehicle which is the '85 Chevrolet license plate CNT 534 in the trunk area and also the rear seta area of that vehicle. The subject began leaving the [sic] and was stopped and arrested. The vehicvle and the rooms



were sealed for the securance
of the search warrant.

I believe the property I previously described in
this affidavit is presently:

(xx) on the premises located
at 1365 W. Grant, rooms #127 and #129.

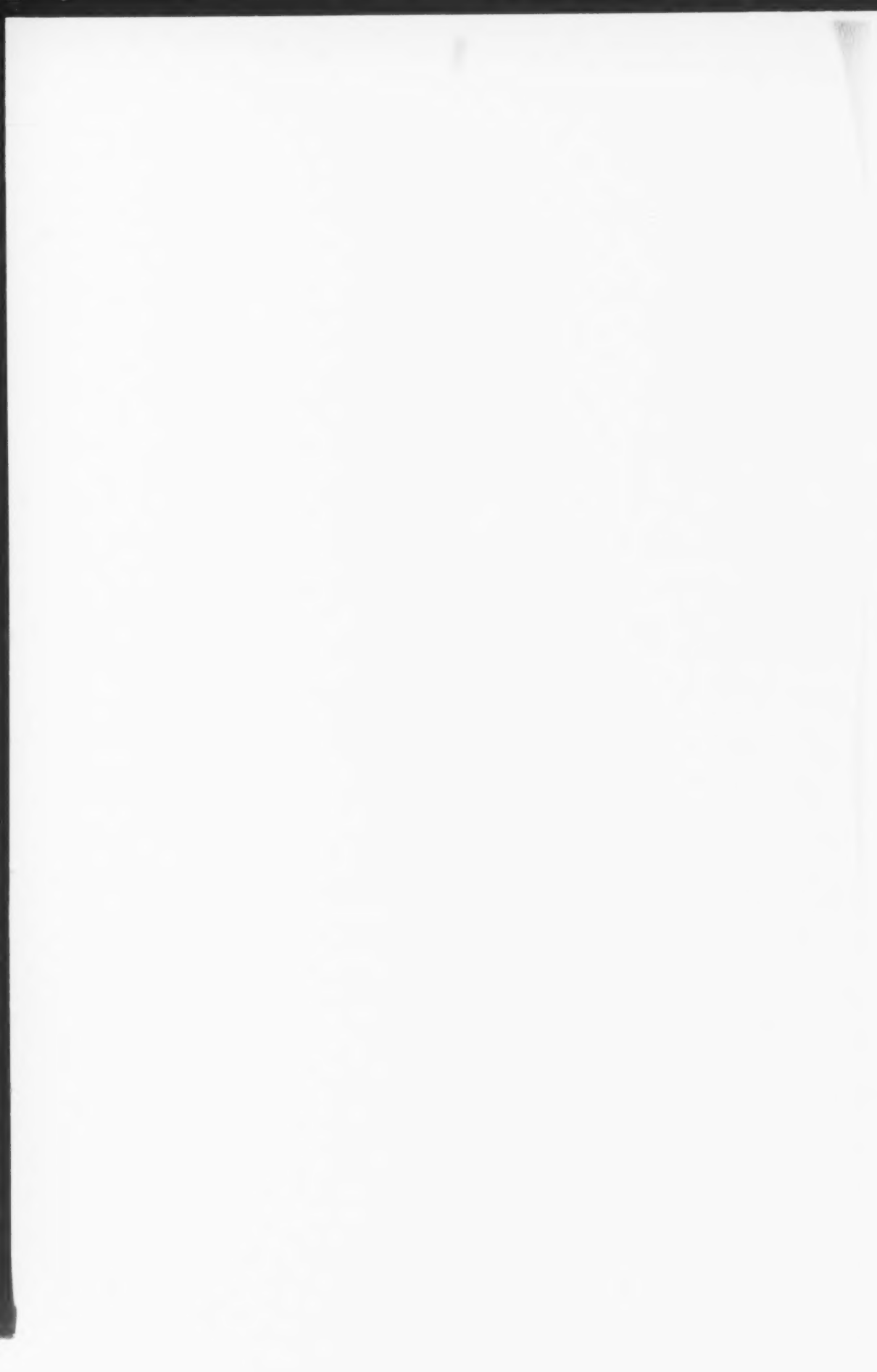
(xx) which consists of motel
rooms, single occupancy each, containing one
bedroom and one bathroom in each connected by an
interior joint door.

(xx) on the person of WILLIAM
WARD KNAPP, 9-20-61.

(xx) on the vehicle described
as a 1985 Chevrolet 4 dr., light green in color,
Arizona license plate number CNT 534.

My belief that the property is presently at this
location is based upon the following reasons which
I have already explained.

Based on the preceding facts I OFFICER KURT KREUTZ
request that a telephonic search warrant be issued.
This concludes my affidavit your honor.



JUDGE ADAMS: Go ahead and read the
warrant.

KREUTZ: I will now read verbatim the
Standard Arizona Duplicate
Original Search Warrant,
State of Arizona, indicating
which spaces I have completed
and which ones I have left
blank.

STANDARD ARIZONA DUPLICATE ORIGINAL SEARCH WARRANT

State of Arizona

No. _____

County of Pima, State of Arizona

To any peace officer in the State of Arizona:

Proof by affidavit having been made this day
before me by KURT KREUTZ, I am satisfied that there
is probable cause to believe that:

(xx) on the person of WILLIAM WARD KNAPP,
9-20-61

(xx) on the premises known as 1365 W. Grant
Rd. (Holiday inn North) rooms #127 and #129.

(xx) in the vehicle describe as 1985 Chevrolet

4 dr. light green in color, Arizona CNT 534
in the City of Tucson, County of Pima, State of
Arizona, there is now being possessed or concealed
certain property or things described as:

1. Quantity of marijuana
2. Indicia of vehicle ownership and room
registry.
3. Scales
4. Packaging and shipping
equipment for marijuana
processing.
5. Monies

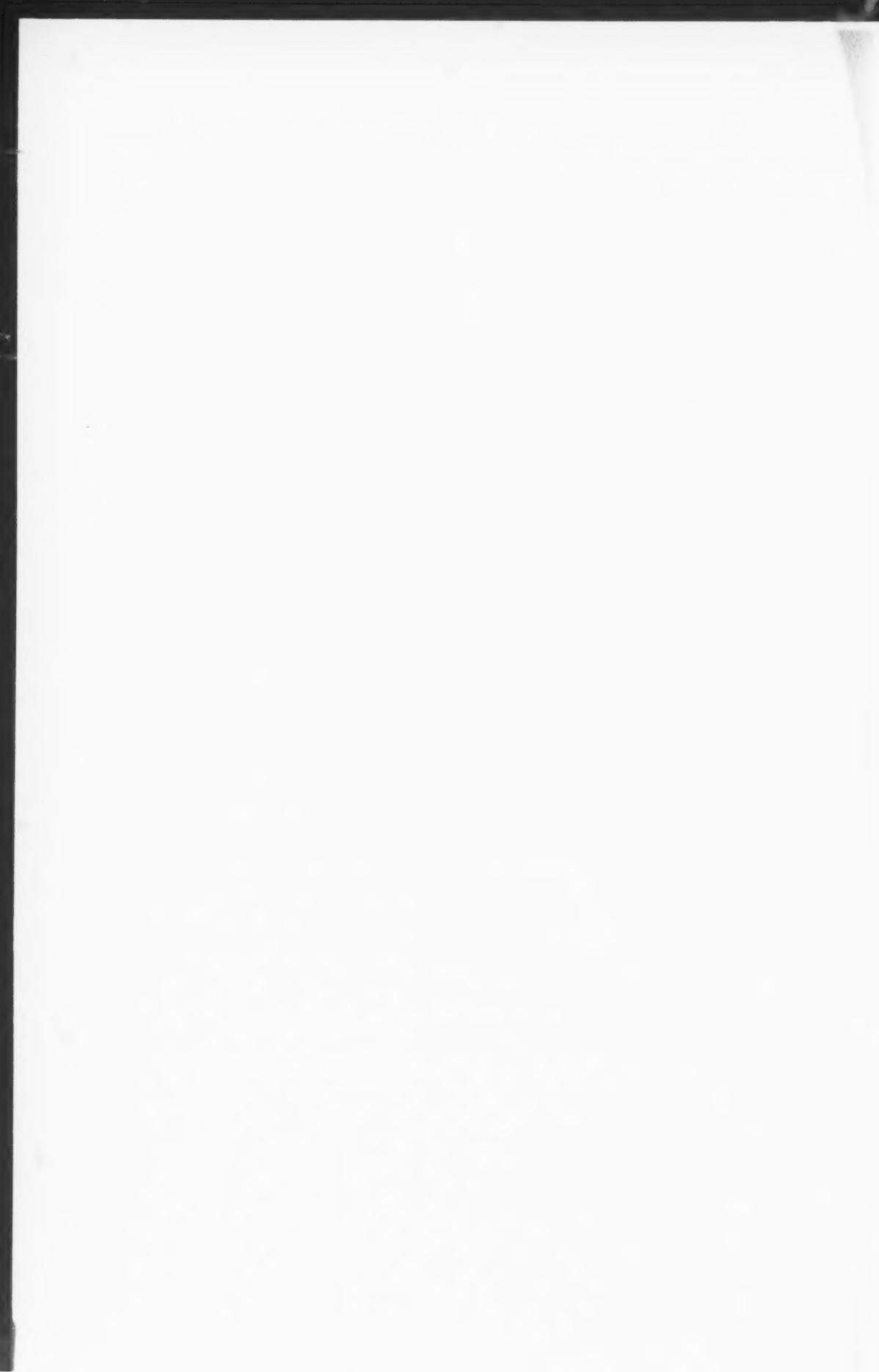
which property or things:

() were stolen or embezzled

(xx) were used as a means for committing a
public offense.

(xx) is being possessed with the intent to use
it means of committing a public offense.

(xx) are in the possession of WILLIAM WARD
KNAPP, to whom it was delivered for the purpose of
concealing it or prevent it from being discovered.



(xx) consists of any item or constitute any evidence which tends to show that a public offense has been committed, such as more fully described in the affidavit, to-wit: unlawful possession of marijuana, unlawful possession of marijuana for sale, which offense occurred on or about the 29th of June, 1985, in Pima County.

YOU ARE THEREFORE COMMANDED:

(xx) in the daytime (excluding the time period between 10:00 P.M. and 6:00 A.M.

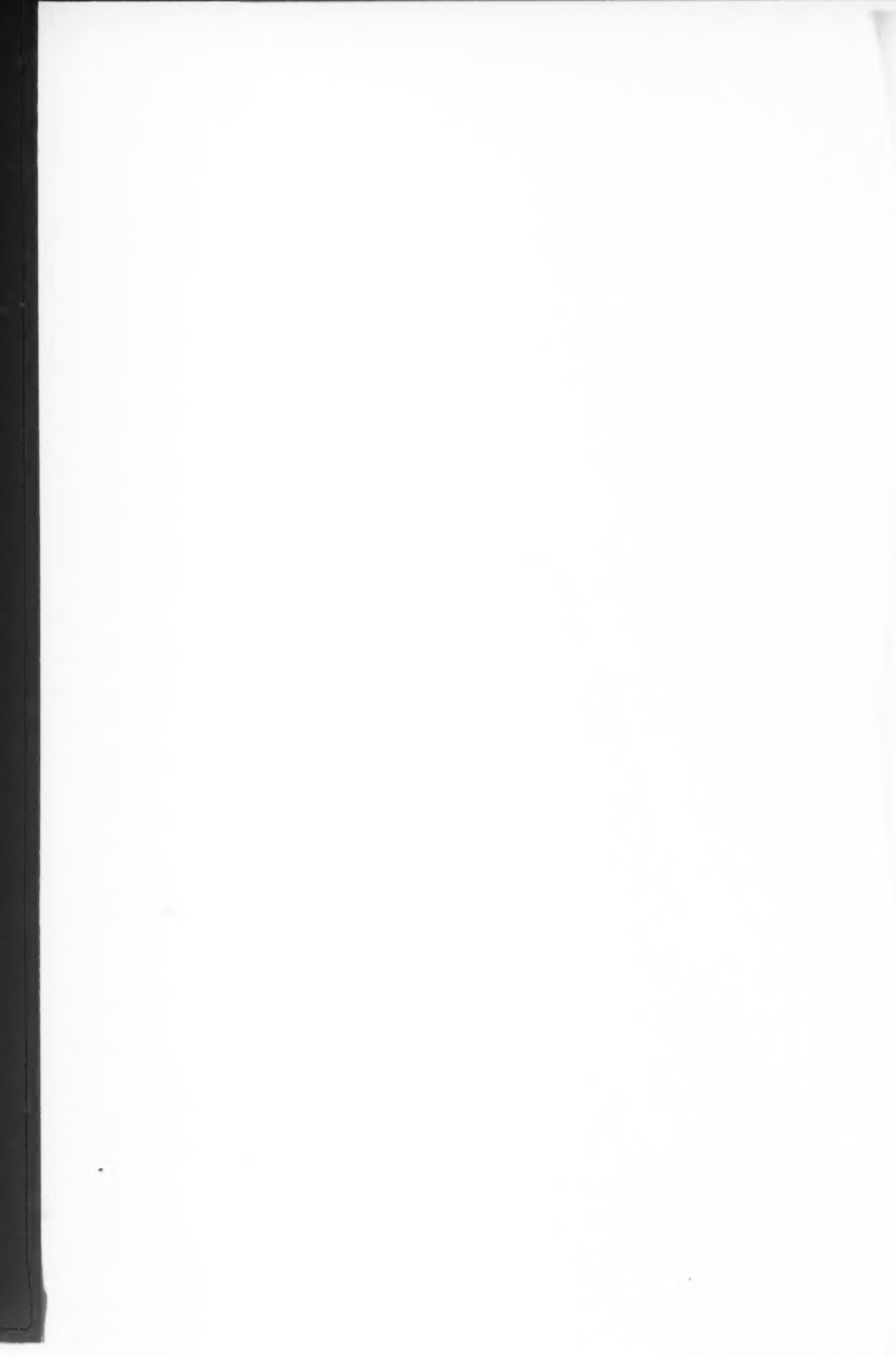
() or nighttime (good cause therefore having been shown to have a search of the above-named or described person(s), premises, and vehicles for the herein-above described property or [sic] and if you find the same or any part thereof, to retain such in your custody or in the custody of the agency you represent, as provided in A.R.S. 13-3920.

Return this warrant to me within five (5) days of the date thereof, as directed by A.R.S. 13-3918.

Given under my hand and dated this 29th day of June, 1985.

KREUTZ:

Should I indicate Judge



Adams?

JUDGE: Yes, and it's no 's' ADAM.

KREUTZ: ADAM. No 's'?

JUDGE: Right.

KREUTZ: Of City of Court?

JUDGE: Right.

/s/JUDGE ADAM

Judge, Justice of the Peace
or Magsitrate of City Court.

KREUTZ: That concludes the reading of
the Standard Arizona
Duplicate Search Warrant. Do
I have your permission to
sign your name?

JUDGE: Yes, you do.

KREUTZ: I am signing my name KURT
KREUTZ, date June 29, 1985,
time now is 1832 hrs. beneath
yours.

/s/JUDGE ADAM

/s/ KURT KREUTZ, June 29, 1985

/s/ CLAUDE RALLS #21686

KREUTZ: And I will also have OFFICER
RALLS #21686 sign as a
witness.

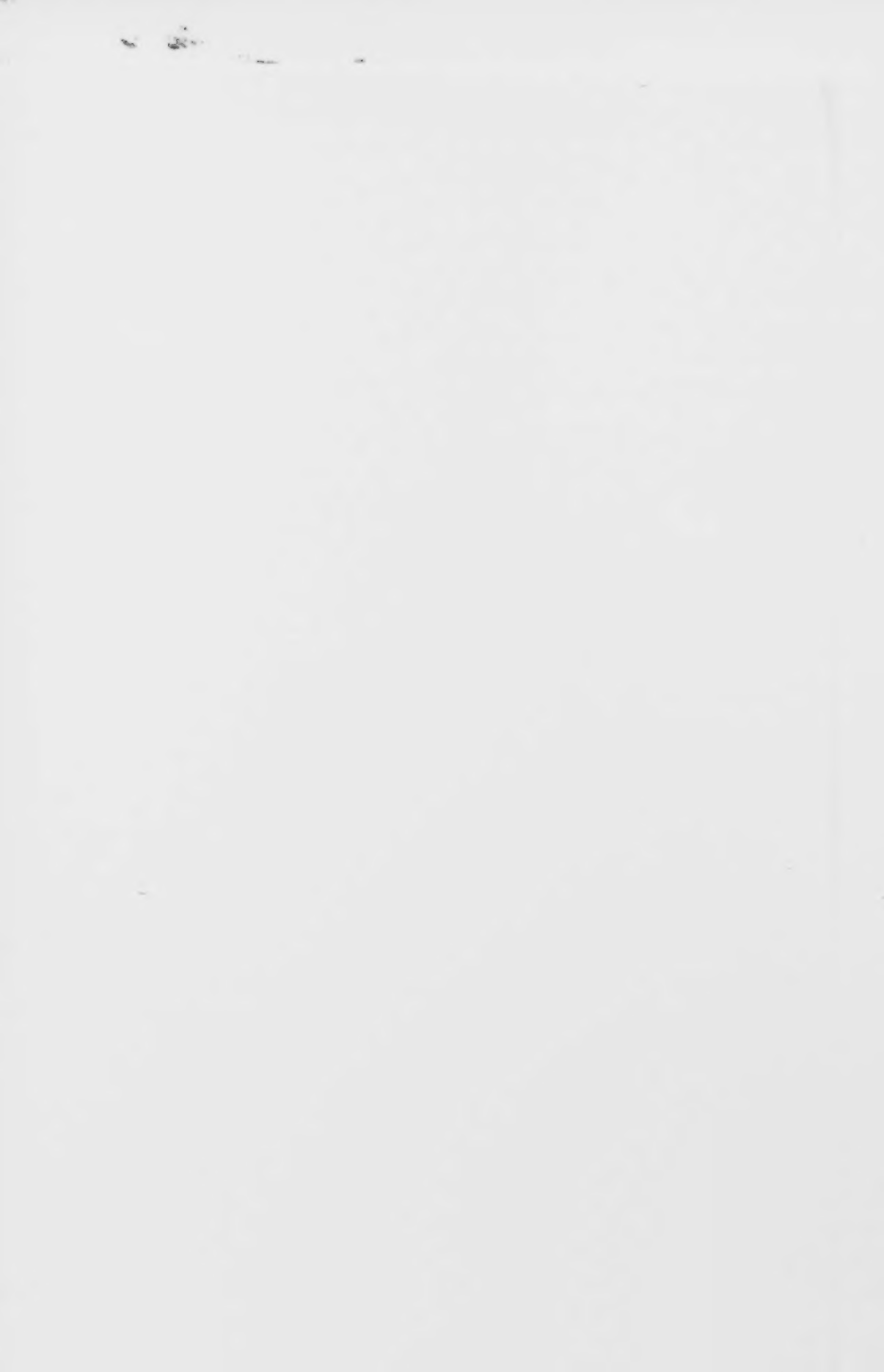
JUDGE: Okay.

KREUTZ: Thank you very much.

JUDGE: You're welcome. . .bye-bye.

KREUTZ: Bye. . .

/lcv



Q What did you do when you got to the Holiday Inn?

A I went to the Holiday Inn and went to an upstairs room, which Officer Ralls and Officer Knoblock were already situated at, and came in contact with both those officers.

Q And did you do anything further?

A In conversation with those offices, I was made aware of what had been seen by a maid at themotel in Room 129, I believe it was, and, also, that Room 127 was secured and unable to be entered by anyone because of the doors being locked from the inside.

I was informed as to a description of a vehicle of a person that was registered at that -- those two rooms and also a description of that person that was registering at those rooms, and at that time, I contacted the Tucson Police Department dispatcher and also contacted a uniformed sergeant in regards to what was going on at the motel and the need for two additional officers to be set up



in the area of the motel in case the person in the vehicle came back.

Q Did the person in the vehicle ultimately come back?

A Yes, he did.

Q What did you do at that point?



further questions.

THE COURT: Cross examination?

CROSS EXAMINATION

MR. HAGER:

Q Officer Kreutz, in your securance of a search warrant, you used information based on what Officers Knoblock and Ralls had seen when they initially entered the room, didn't you?

A Yes, in addition to what was told to me and what I had observed.

Q Now, this telephonic search warrant: these are all your words, and this is your doing completely, isn't it?

A And Judge Adam's, yes.

Q Okay. But, I mean, you're the only officer that conveyed the information to the judge?

A Yes.

Q Correct?

Okay. Now, does this appear to be the search warrant -- telephonic search warrant that was eventually secured?

A As far as I can tell, yes.

Q You graduated from Tucson Police Academy
in '79, extensive background in regards to
location, I.D. of



A At that time, I informed the officers that were set up east and west of the location on Grant Road that the vehicle was at the motel and from the vantage point that we had from the motel room, we were able to observe the driver of the vehicle emptying a suitcase in the rear seat area of his vehicle and also bring items into the motel room Number 129 from his vehicle, and shortly thereafter, he came out, carrying the items, same suitcase and bags, but they appeared filled with something at that time.

Q Did they appear filled when he took them in?

A No, they did not.

Q So it appeared they got filled while he was inside and was carrying stuff out to his car?

A Yes.

Q Okay.

A And then as he got in the vehicle, during the course of this time, he was looking around excessively in all different directions as if



watching for someone, and he got into the vehicle, backed the vehicle away from the slot that was directly in front of the Rooms 127 and 129 and began driving out of the parking lot in a northbound direction.

Q Officer, let me clarify just one thing.

You said that he took suitcases into the motel



Q Was there ever a time when you asked the maid to go in and check the room to look for anything?

I mean, in other words, would it be fair to assume that this was not activity that was initiated by the police in the beginning?

A Yes, Ma'am. We never initiated the activity. We were summoned there by the motel.

MS. NYGAARD: Okay. That's all I have, Your honor.

THE COURT: When this individual arrived, you arrested him; is that right?

THE WITNESS: He went into the room first and then came back before the arrest was made.

THE COURT: With the suitcases?

THE WITNESS: Yes, sir.

THE COURT: What were the grounds for the arrest at that point?

THE WITNESS: We -- one of the suitcases that he took in was a collapsible one and when he came back out, that was full. All his clothing --



well, I don't know if all of them, but there was a big pile of clothing in the back seat of the car, sir, so we assumed --

THE COURT: Well, what I'm getting at, was your observing the marijuana in the bathtub one of the reasons for the arrest?



THE WITNESS: Yes, sir.

MR. HAGAR: Your honor, I just have a couple of more questions

THE COURT: Okay. Go ahead.

RECROSS EXAMINATION

BY MR. HAGER:

Q Ms. Nygaard asked you if one of the reasons you went in initially was for officer safety; is that correct?

A Yes, sir.

Q Okay. But according to your report, it says in your report that "No one was in the room, so we went into 129".

Did the maids tell you that there were people in there or that there were guns in there or anything to that effect?

A The maids told us that they had seen different people come in and out of the room.

Q Did they say there was anybody in there at the present time?

A So we could not be certain whether there



was or wasn't for sure because there possibly could have been somebody in the adjoining room that could have gone into the room.



you spoke to -- first of all, was it a telephonic search warrant?

A Yes. It was from the Adam One Store Front.

Q And was the judge that ultimately authorized the warrant Karen Adam?

A Yes, it was.

Q And did you specify for her the reasons that you believed gave you probable cause for the search?

A Yes, I did.

Q Okay. Could you narrate them for us at this time?

A The warrant was obtained or explained to Judge Adam in regards to the maid seeing a large quantity of marijuana in the bathtub of the motel room Number 129, and that Officers Ralls and Knoblock were contacted by the manager of the motel and on doing a security check of Room 129, they also observed the marijuana in the bathtub, and due to that information, that's how the warrant was



obtained.

Q Okay. Did it also have -- did part of the probable cause also consist of the fact that you had observed the suspect carrying empty items into the room and full items out of the room?

A Yes, it did.

MS. NYGAARD: I don't believe I have any



rented the room was, what name was given?

A No, I don't remember right now.

Q Do you recall whether that was information that you put into your report?

A I am not positive. I would have to look at my report to see.

Q Okay. Was the name -- do you remember whether the name that was on the registration slip was William Knapp?

A No. I remember that was not the name that was on the registration.

Q Okay. What did you do next after you went upstairs?

A After we went upstairs, we contacted the police department and requested that we could see if we could get ahold of someone that worked with the Metro Narcotics Squad, and Officer Kreutz telephoned us there at the motel and he talked to -- I believed he talked to Officer Ralls, then he -- Officer Kreutz responded to the motel, also.

Q Okay. What happened after Officer Kreutz



got there?

A After Officer Kreutz got here, we were watching out and we observed the vehicle which was registered on the registraion slip -- we identified it.



No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner

v.

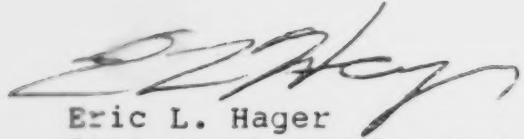
THE STATE OF ARIZONA, Respondent

CERTIFICATE OF SERVICE

I, Eric L. Hager, a member of the Bar of this Court, hereby certify that on this 6th day of April, 1987, threes copies of the Writ for Certiorari in the above-entitled cases were mailed, first class postage prepaid, to Robert K. Corbin, Attorney General 1275 West Washington Street, Phoenix, Arizona 85007, counsel for the respondent herein. I further certify that all parties



required to be served have been served.

A handwritten signature in dark ink, appearing to read "Eric L. Hager", written in a cursive style.

Eric L. Hager
7322 North Oracle Road
Tucson, Arizona 85704
(602) 297-5111
Counsel for Petitioner



No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1986

WILLIAM WARD KNAPP, Petitioner

v.

THE STATE OF ARIZONA, Respondent

AFFIDAVIT OF MAILING PETITION FOR CERTIORARI

Eric L. Hager, being duly sworn,
deposes and says:

I am a member of the Bar of the
Supreme Court of the United States.

On April 6, 1987, at approximately
10:00 p.m., I deposited with the U. S. Postal
Office, Main Branch, 1501 South Cherrybelle
Stravenue, Tucson, Arizona, an envelope addressed
to the Clerk of the Supreme Court of the United
States, first-class postage prepaid, containing the



copies of the petition for certiorari in the above-entitled case.



Eric L. Hager
7322 North Oracle Road
Tucson, Arizona 85704
(602) 297-5111

Subscribed and sworn to before me this 6th day of April, 1987, by Eric L. Hager.


Notary Public

My Commission Expires:

My Commission Expires May 29, 1989